

**R E M A R K S**

Reconsideration of this application, as amended, is respectfully requested.

**THE CLAIMS**

New independent claim 17 has been prepared based on (now canceled) claims 1 and 3 to more clearly and positively recite the subject matter of the present invention in better U.S. form.

New claim 18 has been prepared to recite the subject matter of (now canceled) claim 2, and new claim 19 has been added to recite that the opening and closing support point of claim 18 comprises a hinge.

New claims 20-23, moreover, correspond to the subject matter of claims 5-8, respectively.

No new matter has been added, and it is respectfully requested that new claims 17-23 be approved and entered.

**THE REJECTION IN VIEW OF US 2004/0172863**

Claims 1-16 were rejected under 35 USC 102 as being anticipated by US 2004/0172863.

It is respectfully pointed out, however, that US 2004/0172863 has a filing date of October 16, 2003, which is after the March 24, 2003, filing date of JP 2003-079331, the priority of which is claimed by the present application. Submitted herewith

is an accurate English translation of JP 2003-079331 to demonstrate that new claims 17-23 are fully supported by the disclosure of JP 2003-079331 and therefore are entitled to the claimed priority date of March 24, 2003.

Accordingly, it is respectfully submitted that US 2004/0172863 is not a proper reference against the present application, and it is respectfully requested that the rejection in view of US 2004/0172863 be withdrawn.

THE PRIOR ART REJECTIONS

Claims 1, 2, 7-10, 15 and 16 were rejected under 35 USC 102 as being anticipated by USP 6,481,748 ("Okuda et al"), and claims 1-16 were rejected under 35 USC 103 as being obvious in view of the combination of USP 5,671,820 ("Kobayashi et al"), USP 3,687,484 ("Cosby") and Okuda et al. These rejections, however, are respectfully traversed with respect to the new claims as set forth hereinabove.

It is respectfully pointed out that new independent claim 17 recites the subject matter recited in original claims 1 and 3, and that claim 3 was (correctly) not rejected as being anticipated by or obvious in view of Okuda et al. And it is respectfully submitted that Okuda et al clearly does not disclose, teach or suggest the features of the present invention as recited in (original claim 3 and) new independent claim 17.

It is respectfully submitted, moreover, that Kobayashi et al, Cosby and Okuda et al are not combinable to achieve the features of the present invention as recited in new independent claim 17.

New independent claim 17 recites a counterweight for a hydraulic shovel, comprising: a central base portion, and supporting column portions extending vertically at left and right sides of the central base portion. According to new independent claim 17, the supporting column portions are taller than the central base portion, and a floor frame of the hydraulic shovel is provided vertically over the supporting column portions, such that the supporting column portions support and are coupled to the floor frame.

The Examiner has cited Kobayashi et al for the disclosure of a hydraulic shovel with a canopy. In addition, the Examiner asserts that Cosby discloses a counterweight supporting an overhead guard assembly and a floor frame. And the Examiner has relied upon Okuda et al for the specific disclosure of a counterweight with left and right supporting portions.

It is respectfully submitted, however, that Cosby merely discloses supporting an overhead guard assembly with the counterweight, and does not disclose a floor frame provided vertically over the counterweight and coupled thereto, as recited in new independent claim 17.

It is respectfully submitted, moreover, that Okuda et al is not properly combinable with Kobayashi et al and Cosby to achieve the features recited in new independent claim 17.

Specifically, it is respectfully pointed out that Okuda et al is a U.S. patent corresponding to JP 2001-106479, which is described in the Background of the Invention section of the present application. As explained in the Background of the Invention section of the present application, the structure disclosed by Okuda et al requires a crane to attach and detach the split portions of the counterweight, and the structure disclosed by Okuda et al is not suitable for use in a compact hydraulic shovel.

Indeed, it is respectfully pointed out that the structure disclosed by Okuda et al, in which the split portion of the counterweight is raised up and off of the rest of the counterweight to open the counterweight, clearly would not be provided under a floor frame. In addition, it is respectfully pointed out that Okuda et al is directed to a structure in which the counterweight and cab are provided at opposite ends of the vehicle, whereas the structures disclosed by Kobayashi et al and Cosby are compact.

Thus, it is respectfully submitted that it would not have been obvious to combine the structure disclosed by Okuda et al, which is not suitable for a compact vehicle and requires a crane

to lift up the split portion of a counterweight, with the structures of Kobayashi et al and Cosby to provide a counterweight as recited in new claim 17, wherein a floor frame of the hydraulic shovel is provided vertically over the supporting column portions of the counterweight, such that the supporting column portions support and are coupled to the floor frame.

In view of the foregoing, it is respectfully submitted that the present invention as recited in new claim 17 and new claims 18-23 depending therefrom clearly patentably distinguishes over Kobayashi et al, Cosby and Okuda et al, taken singly or in any combination, under 35 USC 102 as well as under 35 USC 103.

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Entry of this Amendment, allowance of the claims and the passing of this application to issue are respectfully solicited.

If the Examiner has any comments, questions, objections or recommendations, the Examiner is invited to telephone the undersigned for prompt action.

Respectfully submitted,

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